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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

GAMETEK LLC,

Plaintiff,

v.

FACEBOOK, INC.; FACEBOOK
OPERATIONS, LLC; FACEBOOK
PAYMENTS, INC.; FACEBOOK SERVICES,
INC.; 6WAVES LLC f/k/a LOLAPPS INC.
d/b/a 6WAVES LOLAPPS d/b/a SIX
WAVES; 6WAVES TECHNOLOGIES, LLC
f/k/a LOLAPPS INC. d/b/a 6WAVES
LOLAPPS d/b/a SIX WAVES; BIG VIKING
GAMES INC. f/k/a TALL TREE GAMES;
BUFFALO STUDIOS LLC; CIE GAMES,
INC.; CROWDSTAR INTERNATIONAL
LIMITED; CROWDSTAR INC.;
CROWDSTAR NETWORK, LLC;
ELECTRONIC ARTS INC. d/b/a EA
INTERACTIVE d/b/a PLAYFISH d/b/a
POGO GAMES; FUNZIO, INC.; FUNZIO
USA, INC.; ROCKYOU, INC.; SIX WAVES
INC. f/k/a LOLAPPS INC. d/b/a 6WAVES
LOLAPPS d/b/a SIX WAVES; THEBROTH
INC.; WOOGA GMBH; ZYNGA INC.; and
DIGITAL CHOCOLATE, INC.,

Defendants.

CASE NO. 12cv0501-BEN-RBB

United States Magistrate Judge Ruben B. Brooks

**DEFENDANT ELECTRONIC ARTS INC.'S
EX PARTE APPLICATION FOR ORDER
PERMITTING CORPORATE COUNSEL TO
APPEAR AS PARTY REPRESENTATIVE
AT THE OCTOBER 17, 2012 SETTLEMENT
CONFERENCE OR ALTERNATIVELY FOR
ORDER ALLOWING PARTY
REPRESENTATIVE TO APPEAR
TELEPHONICALLY**

Settlement Conference Date: October 17, 2012
Time: 8:30 a.m.
Judge: Ruben B. Brooks

TO PLAINTIFFS, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT Defendant Electronic Arts Inc. d/b/a EA Interactive d/b/a Playfish d/b/a Pogo Games (“EA”) hereby applies to this Court *ex parte* for an Order to permit Russell Evans, corporate counsel for EA, to appear as EA’s representative at the Settlement Conference scheduled for October 17, 2012, at 8:30 am (“Settlement Conference”), or, in the alternative, to permit a non-attorney company representative to appear telephonically at the Settlement Conference on behalf of EA.

This Court stated in the Notice and Order for the ENE that “[c]orporate counsel shall not appear on behalf of a corporation as the party representative who has the authority to negotiate and enter into a settlement.” *See*, Order Setting ENE Conference, Dkt. No. 64. However, based on a showing of good cause, the Court granted EA’s previous *Ex Parte* Application for Order permitting Corporate Counsel to Appear as Party Representative. *See*, Order Granting *Ex Parte* Application, Dkt. No. 100. Similarly, in the initial Order setting the Settlement Conference, the Court stated that “[p]arties other than individuals shall bring a non-lawyer representative with complete authority to enter into a binding settlement.” Dkt. No. 128; *see also* Dkt. No. (resetting Settlement Conference for 8:30am) . At EA, the employee with the ultimate decision-making power to settle this matter, and the person who has (and will continue to have) “complete authority to enter into a binding settlement” is Russell Evans. *Id.* Mr. Evans is the Company’s Vice President of Legal Affairs, and a lawyer. Not only does Mr. Evans have the full authority to settle this matter on behalf of EA, but as the individual charged with managing EA’s worldwide litigation and risk-management activities, Mr. Evans also is the individual at EA most knowledgeable regarding the legal and factual issues in this case. Therefore, EA renews its request to have Mr. Evans appear as its party representative.

Requiring a non-attorney corporate representative to attend for EA would also be burdensome to the company and ultimately unhelpful to the settlement discussion. None of the non-attorney executives involved with the accused products in this case resides or works in San Diego. Moreover, none of them is involved in overseeing the day-to-day legal issues in this case and none of them possess experience with patent infringement claims or the patent at issue in this case, which would enable them to effectively engagement in settlement discussions at the Settlement Conference.

1 Accordingly, if a non-attorney were required to represent EA at the Settlement Conference, Mr.
2 Evans effectively would have to transfer his knowledge of the case to this non-attorney
3 representative, Mr. Evans would have to delegate his settlement authority to this individual, and the
4 individual would have to travel to San Diego to attend what likely would be his or her first settlement
5 conference.

6 If the Court does not wish to grant this exception, EA alternatively requests that a non-
7 attorney corporate representative for EA be able to appear at the Settlement Conference
8 telephonically, in addition to Mr. Evans appearing in person.

9 Based on the foregoing reasons, the attached declarations of Russell Evans and Cassandra
10 Gaedt (counsel for EA), and such further evidence and arguments as may be presented at the hearing,
11 if any, on this Application, EA requests that the Court enter an order permitting Russell Evans to
12 appear as EA's representative at the Settlement Conference, or alternatively, that, in addition to Mr.
13 Evans appearing in person, the Court permit a non-attorney company representative to appear
14 telephonically at the Settlement Conference.

15 Dated: September 06, 2012

16 WAYNE BARSKY
17 JASON LO
18 JORDAN H. BEKIER
19 CASSANDRA L. GAEDT
20 GIBSON, DUNN & CRUTCHER LLP

21 By: /s/ Jason Lo

Wayne Barsky
Jason Lo
Jordan H. Bekier
Cassandra L. Gaedt

23 Attorneys for ELECTRONIC ARTS, INC. d/b/a EA
24 INTERACTIVE d/b/a PLAYFISH d/b/a POGO
25 GAMES
26
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DECLARATION OF CASSANDRA GAEDT

I, CASSANDRA GAEDT, declare:

1. I am an attorney at law, duly licensed to practice in the state of California and before this Court, and am an attorney with the law firm of Gibson Dunn & Crutcher LLP, attorneys for Defendant Electronic Arts Inc. d/b/a EA Interactive d/b/a Playfish d/b/a Pogo Games in the above-entitled action. I have personal knowledge of the facts set forth in this declaration and, if called and sworn as a witness, I could and would competently testify to them.

2. On September 6, 2012, I gave notice by electronic mail of EA's intent to file this *ex parte* application to all counsel of record in this case. Plaintiff GameTek LLC opposed this application, and no defendant's counsel opposed.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

Executed at Los Angeles, California on September 6, 2012.

By: /s/ Cassandra Gaedt
Cassandra Gaedt

DECLARATION OF RUSSELL EVANS

I, RUSSELL EVANS, declare:

1. I am an attorney at law, duly licensed to practice in the state of California. I have personal knowledge of the facts set forth in this declaration and, if called and sworn as a witness, I could and would competently testify to them.

2. I am EA's Vice President of Legal Affairs. Part of my responsibility at EA includes managing EA's worldwide litigation and risk-management activities. Within EA, I am the person most knowledgeable about the legal issues in this case.

3. I am prepared to attend the October 17, 2012 Settlement Conference on behalf of EA. At the Settlement Conference, I will have full authority to enter into a binding settlement in this matter on behalf of EA.

4. EA does not have any executives residing or working in San Diego who are involved with the accused products in this case, and none of them are involved in the day-to-day issues regarding this litigation.

5. If EA is required to produce a non-attorney representative for the Settlement Conference in addition to Mr. Evans, such person would need to travel from outside San Diego, likely from Northern California.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

Executed at Redwood City, California on September 10, 2012.

By: 

Russell Evans

CERTIFICATE OF SERVICE

I, the undersigned, declare:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 333 South Grand Avenue, Los Angeles, California 90071.

On September 10, 2012, I caused the following documents to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filings to all known counsel of record:

DEFENDANT ELECTRONIC ARTS INC.'S *EX PARTE* APPLICATION FOR ORDER PERMITTING CORPORATE COUNSEL TO APPEAR AS PARTY REPRESENTATIVE AT THE OCTOBER 17, 2012 SETTLEMENT CONFERENCE OR ALTERNATIVELY FOR ORDER ALLOWING PARTY REPRESENTATIVE TO APPEAR TELEPHONICALLY

I declare under penalty of perjury under the laws of the United States of America and the State of California that the above is true and correct.

Executed on September 10, 2012, at Philadelphia, Pennsylvania.

/s/ Cassandra Gaedt
Cassandra Gaedt